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December 1, 2021

Via ECF

The Honorable Sarah Netburn
Thurgood Marshall United States Courthouse
40 Foley Square, Room 430
New York, NY 10007

Re: *In re Terrorist Attacks on September 11, 2001*, 03-md-1570 (GBD) (SN)

Dear Judge Netburn:

I write on behalf of Defendant Kingdom of Saudi Arabia (“Saudi Arabia”) to request limited redactions to the sealed filings made on November 24, 2021. In particular, certain materials filed by John Fawcett and Kreindler & Kreindler LLP (“Kreindler & Kreindler”) refer to the confidential contents of the deposition of Musaed Al Jarrah and should be redacted before public filing. Counsel for Saudi Arabia has met and conferred with counsel for Fawcett and counsel for Kreindler & Kreindler, and these parties have reached partial but not complete agreement, as set forth below. The non-Kreindler Plaintiffs Executive Committees (“PECs”) participated in the meet-and-confer discussions but took no position. Defendant Dallah Avco has also taken no position.

1. The morning of November 1, 2021, at the beginning of the evidentiary hearing, the Court heard argument in chambers on Saudi Arabia’s request that the contents of the Al Jarrah deposition, and certain other documents and testimony related to the contents of the deposition, be maintained under seal and not disclosed on the open record. The Court ruled that the deposition would remain under seal but that testimony concerning Fawcett’s motive for violating the Court’s protective orders would be heard in open court. The Court later summarized its ruling on the transcript as follows:

We’re going to talk about the fact that Mr. Fawcett said that allegations that Jarrah had child pornography on his computer is why he felt compelled to disclose it. So that is what we’re going to talk about, but we’re not going to talk about anything about questions that were asked, what was elicited during the deposition, what was introduced as an exhibit. That is all off limits.

Tr. 314:25-315:6. The day after the hearing, the Court issued a written order with a similar ruling on Saudi Arabia’s motion to seal previous filings that had related to the Al Jarrah

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testimony, directing: “Applying th[e Court’s] guidance to the pending motion by the Kingdom of Saudi Arabia and Al Jarrah’s at ECF No. 7066, statements about the contents of the deposition may not be publicly disclosed and must be redacted. As the parties agree, material protected by the Vienna Convention must be redacted as well.” ECF No. 7314.

2. Fawcett’s proposed findings of fact and conclusions of law, ECF No. 7387, refer directly to the contents of the Al Jarrah deposition in paragraphs A.5, A.6, and A.8, on page 2. Those references should be redacted before public filing. Consistent with our understanding of the Court’s ruling, Saudi Arabia is not requesting redactions of indirect references to the contents of the deposition that set out Fawcett’s allegations or beliefs, or that describe his contentions concerning his motive for violating the Court’s protective orders.

Paragraphs A.5, A.6, and A.8 go beyond merely summarizing Fawcett’s testimony in his declaration. Those paragraphs instead disclose, or purport to disclose, the actual contents of the underlying deposition testimony. That is shown both by the language of paragraph A.5 itself and by the citation at the end of paragraph A.5, which refers to K&K Ex. 102. Accordingly, paragraph A.5 crosses the line that the Court drew at the hearing and should be redacted. The additional references to the deposition in paragraphs A.6 and A.8, in context, relate back to that earlier discussion and therefore should be redacted as well.

Counsel for Fawcett has requested that we state his position in the following language:

Counsel for Mr. Fawcett believes that the language at issue does not need to be redacted, as it relies directly on statements in Mr. Fawcett’s declarations and thus on testimony accepted into evidence at the hearing. That said, to the extent Saudi Arabia seeks to redact the language at issue from the public filing while the Court considers the submissions it has received, Mr. Fawcett has no objection.

Counsel for Kreindler & Kreindler has indicated that Kreindler & Kreindler will oppose the proposed redactions to ECF No. 7387. In addition to the contention (addressed above) that the disputed paragraphs are based on Fawcett’s testimony, Kreindler & Kreindler has also incorrectly contended that counsel for Saudi Arabia made the information in dispute public by cross-examining Fawcett about it at the hearing. Kreindler & Kreindler made the same argument at the hearing, and the Court rejected it. *See* Tr. 474:5-8 (“I don’t think Mr. Hansen has crossed the line as to my prior order . . .”). Further, after the hearing, the Court reaffirmed that the contents of the deposition remain under seal. *See* ECF No. 7314.

3. Saudi Arabia is not requesting any redactions to Kreindler & Kreindler’s proposed findings of fact and conclusions of law. The appendix filed with those proposed findings and conclusions, however, contains record materials that should be redacted, including some materials that are already subject to this Court’s order at ECF No. 7314.

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a. In Appendix Volume B, ECF No. 7386-3, K&K Exhibit 102 is Saudi Arabia's July 23, 2021 letter to the Court, originally filed under seal as ECF No. 6981. Pages 1, 2, 3, and 5 discuss the contents of the Al Jarrah deposition and should be redacted before public filing.

b. In Appendix Volume C1, ECF No. 7386-4, PDF pages 28-33 are the same July 23, 2021 letter, which should be redacted in the same way before public filing.

c. In Appendix Volume C2, ECF No. 7386-5, PDF pages 81-86 are Saudi Arabia's September 29, 2021 letter to the Court, originally filed under seal as ECF No. 7157. Page 3 of that letter (PDF page 83) contains one reference to the contents of the Al Jarrah deposition that should be redacted before public filing. PDF pages 87-89 are Kreindler & Kreindler's September 30, 2021 letter to the Court, originally filed under seal as ECF No. 7162. Page 3 of that letter (PDF page 89) contains a discussion of the contents of the Al Jarrah deposition that should be redacted before public filing. PDF pages 97-127 are an excerpt of testimony from the Al Jarrah deposition, originally attached as Exhibit A to Kreindler & Kreindler's September 30 letter and filed under seal as ECF No. 7162-1. They should be redacted in their entirety before public filing. There is no need to redact PDF pages 90-96, the caption and appearances.

Counsel for Kreindler & Kreindler has indicated that Kreindler & Kreindler provisionally agrees to the redactions to ECF Nos. 7386-3, 7386-4, and 7386-5, pending resolution of the parties' disputes about confidentiality designations, and that Kreindler & Kreindler reserves its rights to object to Saudi Arabia's confidentiality designations. Counsel for Fawcett has indicated that he does not object to Saudi Arabia's proposed redactions to ECF Nos. 7386-3, 7386-4, and 7386-5.

Because this request relates to material that the Court has already ordered sealed after briefing and argument, we have not included further discussion of the analysis under *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110 (2d Cir. 2006).

Copies of the documents set forth above, with highlighting in yellow showing our proposed redactions, are being emailed to chambers, with copies to counsel for Kreindler & Kreindler, counsel for Fawcett, the non-Kreindler PECs, counsel for the Federal Bureau of Investigation, and counsel for Dallah Avco.

Respectfully submitted,

/s/ Michael K. Kellogg

Michael K. Kellogg
Counsel for the Kingdom of Saudi Arabia

cc: All MDL Counsel of Record (via ECF)